

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION**

B&S WRECKER SERVICES, LLC,

Plaintiff,

vs.

**NATIONAL LIABILITY & FIRE
INSURANCE COMPANY,**

Defendant.

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Case No. _____

INDEX OF STATE COURT PLEADINGS AND FILING DATES

TAB	DOCUMENT	DATE
1.	State Court Docket Sheet – Register of Actions, 42 nd Judicial District Court, Cause No. 52074-A	1/15/2025
2.	Plaintiff's Original Petition	12/05/2024
3.	Request for Issuance of Citation	12/05/2024
4.	Citation – National Liability & Fire Insurance Company	12/05/2024
5.	Citation - National Liability & Fire Insurance Company	12/05/2024
6.	Request – Letter to court requesting documents	01/14/2025
7.	Defendant National Liability & Fire Insurance Company's Original Answer	01/24/2025

TAB NO. 1

REGISTER OF ACTIONS**CASE No. 52074-A****B&S Wrecker Services, LLC vs. National Liability & Fire Insurance Company**§
§
§
§
§Case Type: **Contract: Other**
Date Filed: **12/05/2024**
Location: **42nd District Court****PARTY INFORMATION**

Defendant	National Liability & Fire Insurance Company	Lead Attorneys
Plaintiff	B&S Wrecker Services, LLC	Frederick Dunbar <i>Retained</i> 325-455-1889(W)

EVENTS & ORDERS OF THE COURT**OTHER EVENTS AND HEARINGS**

12/05/2024	Original Petition	
12/05/2024	Request	
12/05/2024	Citation	
	<i>National Liability & Fire Insurance Company/Envelope # 94983141/Envelope # 95445220</i>	
12/05/2024	Citation	
	National Liability & Fire Insurance Company	Unserved
01/14/2025	Request	
	<i>Letter to court requesting documents.</i>	

FINANCIAL INFORMATION

	Defendant National Liability & Fire Insurance Company		
	Total Financial Assessment		1.00
	Total Payments and Credits		1.00
	Balance Due as of 01/22/2025		0.00
01/14/2025	Transaction Assessment		1.00
01/14/2025	E-File Payment	Receipt # DC-370157	National Liability & Fire Insurance Company (1.00)
	Plaintiff B&S Wrecker Services, LLC		
	Total Financial Assessment		358.00
	Total Payments and Credits		358.00
	Balance Due as of 01/22/2025		0.00
12/05/2024	Transaction Assessment		350.00
12/05/2024	E-File Payment	Receipt # DC-369000	B&S Wrecker Services, LLC (213.00)
12/05/2024	State Credit		(137.00)
12/05/2024	Transaction Assessment		8.00
12/05/2024	E-File Payment	Receipt # DC-369007	B&S Wrecker Services, LLC (8.00)

TAB NO. 2

Filed 12/5/2024 11:02 AM
Accepted: 12/5/2024 11:17 AM
Tammy Robinson
District Clerk
Taylor County, Texas
Monica Mendoza

CAUSE NO. 52074-A

B&S WRECKER SERVICES, LLC
Plaintiff,

v.

**NATIONAL LIABILITY & FIRE
INSURANCE COMPANY**
Defendant.

Taylor County - 42nd District Court
DISTRICT COURT

IN AND FOR

TAYLOR COUNTY TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now COMES B&S Wrecker Services, LLC (the "Plaintiff") complaining of and about National Liability & Fire Insurance Company, and for cause of action shows unto the Court the following:

I. DISCOVERY CONTROL PLAN

Plaintiff intends that discovery be conducted under Discovery Level 3.

II. PARTIES

Plaintiff B&S Wrecker Services, LLC is a domestic entity doing business in Taylor County, Texas.

Defendant National Liability & Fire Insurance Company is a foreign insurance company. Defendant may be served with citation directed to its agent for service, **Corporation Service**

Company d/b/a CSC-Lawyers Incorporation Service Company at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

III. JURISDICTION AND VENUE

The subject matter in controversy is in excess of the minimum jurisdictional limits of this Court.

This court has jurisdiction over the Defendant because the coverage was sold to Plaintiff by Defendant to cover its property in Texas.

Venue is proper in this County because the covered loss happened in this County.

IV. FACTS

At all material times, Plaintiff possessed coverage with National Liability & Fire Insurance Company for a 2014 Dodge tow truck VIN number 3C7WRSCL1EG113348, under policy number 73TRR252828.

On or about January 9, 2023, Sherry Davis was operating the insured vehicle as an employee of Plaintiff. She was heading west on Interstate 20 to collect a vehicle in Sweetwater using the subject Dodge tow truck. The vehicle hit debris on the road on or near Trent, Taylor County Texas. The resultant oil leak occasioned by damage from the debris occasioned severe damage to the engine of the vehicle.

National Liability & Fire Insurance was timely notified of this loss. Rather than properly evaluate this loss, National Liability & Fire Insurance denied the claim.

V. CAUSES OF ACTION

BREACH OF CONTRACT

Plaintiff has timely and properly notified Defendant of the occurrence described above. Plaintiff has fully complied with all of the conditions of said insurance policy prior to the bringing of this suit. All conditions precedent have been performed or have occurred. As such, Plaintiff is fully entitled to the benefits allowed under the insurance policy. Nevertheless, Defendant has failed and refused, and still fails and refuses, to pay Plaintiff the benefits under this policy as they are contractually required to do and to which Plaintiff is entitled.

Accordingly, Defendant is liable for breach of contract.

The reasonable and customary cost from to repair the damage to the subject vehicle is \$25,394.81. B&S has lost income averaging \$350 per day to present that this truck has been in disuse due to covered loss. B&S sues to recover these actual economic damages.

VI. VIOLATIONS OF THE PROMPT PAYMENT OF CLAIMS ACT

Plaintiff re-alleges and incorporates by reference all previous and subsequent paragraphs herein.

Pursuant to Section 542.058 of the Texas Insurance Code, if an insurer, after receiving all items, statements, and forms reasonably requested and required under Section 542.055, delays payment of the claim for a period exceeding the period specified by other applicable statutes or, if other statutes do not specify a period, for more than 60 days, the insurer shall pay damages and other items as provided by Section 542.060. In addition to the amount of Plaintiff's claim for actual damages, Plaintiff seeks interest on the amount of the claim in the amount of five percent per annum on top of that that prescribed in Section 304.003, Finance Code, together with reasonable attorney's fees.

VII. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Plaintiff re-alleges and incorporates by reference all previous and subsequent paragraphs herein.

At all relevant times, Defendant owed Plaintiff an implied covenant of good faith and fair dealing.

Defendant breached their implied covenant of good faith and fair dealing when it failed and refused to pay Plaintiff any benefits the policy as they are contractually required to do.

As a direct and proximate result of Defendant's breaches of the implied covenant of good faith and fair dealing, Plaintiff suffered monetary damages in an amount to be determined at trial.

VIII. VIOLATIONS OF THE UNFAIR CLAIM SETTLEMENT ACT

Defendant further violated the Tex. Ins. Code §541.060 and §542.003 in that Defendant failed to attempt in good faith to effect a prompt, fair and equitable settlement of Plaintiff's insurance claims. Defendant further violated this act by compelling Plaintiff to instigate litigation by wrongfully denying coverage and by failing and refusing to make an offer of fair compensation.

IX. EXEMPLARY DAMAGES

Plaintiff would further show that the acts and omissions of Defendant complained of herein constitute gross negligence and that the same was done, or failed to be done, in a manner which demonstrated conscious, heedless and reckless disregard for the rights welfare and safety of the Plaintiff and others similarly situated. Defendant's acts or omissions described above, when viewed from the standpoint of Defendant at the time of the acts or omissions, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff and others. Defendant had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others. In order to punish said Defendant and to deter such actions and/or omissions in

the future, Plaintiff also seeks recovery from Defendant for exemplary damages as provided by Section 41.003(a) of the Texas Civil Practice and Remedies Code.

The above-mentioned acts constitute fraud on the part of Defendant. As a proximate result of the tortious conduct of the Defendant, Plaintiff was damaged in that he suffered not only the loss of those sums due and owing under the policy, but also incurred unnecessary attorney fees and expenses. The conduct of the Defendant was malicious or fraudulent so as to entitle Plaintiff to an award of exemplary damages in an amount to be determined by the trier of fact. The above-mentioned acts constitute fraud on the part of Defendant, and therefore, the Plaintiff is entitled to exemplary damages pursuant to common law and statutory law.

X. ATTORNEYS' FEES CLAIM AGAINST DEFENDANT

It was necessary for Plaintiff to retain the services of the undersigned counsel for the prosecution and collection of the claims. Therefore, Plaintiff is entitled to recover, pursuant to Section 542.060 of the Texas Insurance Code, the additional sum of simple interest in the amount of five percent per annum on top of that that prescribed in Section 304.003, Finance Code. Pursuant to Section 542A.007 of the Texas Insurance Code, Plaintiff seeks a reasonable sum for the necessary services of Plaintiff's attorneys in the preparation and trial of this action, including any appeals to the Court of Appeals or the Supreme Court of Texas. In addition, request is made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just, as provided by all applicable law, specifically including, but not limited to the following: (a) Chapter 37 of the Texas Civil Practice and Remedies Code; (b) Chapter 38 of the Texas Civil Practice and Remedies Code; and (b) common law.

XI. RANGE OF DAMAGES SOUGHT

Plaintiff seeks total damages between \$250,000.00 and \$1,000,000.00.

XII. PRE-JUDGMENT & POST JUDGMENT INTEREST

Plaintiff further alleges that he is entitled to recover pre-judgment and post-judgment interest at the maximum legal rate as provided for by law.

By reason of all of the above and foregoing elements, Plaintiff has suffered losses and damages in a sum in excess of the minimum jurisdictional limits of this Court and for which Plaintiff hereby sues said Defendant.

XIII. CONDITIONS PRECEDENT

All conditions precedent have been performed or have occurred.

XIV. JURY DEMAND

Plaintiff demands a trial by jury.

XV. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays for the following:

- A. That Defendant be cited to appear herein;
- B. That after trial on the merits, the Honorable Court enters judgment against Defendant in favor of Plaintiff for actual damages, consequential damages, incidental damages, compensatory damages, mental anguish damages, punitive damages, attorneys' fees, costs of court, and expenses of the lawsuit, pre-judgment interest, and post-judgment interest, as allowed by law or as plead herein; and
- C. For all such further and additional relief to which Plaintiff is justly entitled at law and in equity.

Respectfully Submitted,

/s/Rick Dunbar
FREDERICK DUNBAR
Texas Bar No. 24025336

7242 Buffalo Gap Road
Abilene, Texas 79606
Telephone: 325/428.9450
Facsimile: 325/455.1912
Rickdunbar2013@gmail.com

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY

TAB NO. 3

Request for Issuance Form

Date: 12-5-2024

Payment: _____

Cause Number:

Style of Case: *B&S Wrecker Services, LLC v. National Liability & Fire Insurance Company*

PLEASE ISSUE:

☒ Citation (Personal Service)

Indicate what to serve with Issuance

☐ Citation by Certified MailPetition☐ Citation and Temporary Restraining Order☐ Citation and Notice of Hearing☐ Notice of Hearing

Indicate who to serve with Issuance

☐ Notice of Hearing for Protective Order

National Liability & Fire Insurance Company

☐ Writ of Habeas Corpus/Attachment☐ Citation by Posting /Publication (specify)☐ Notice of Expunction☐ Abstract of Judgment ☐ Execution (circle) 30, 60, 90 days☐ Other

Send to Issuance to:

☐ Sheriff of Taylor County☐ Constable of Taylor County☐ Certified Mail Service☒ Return to AttorneyName of Attorney: rickdunbar2013@gmail.com☐ Private Process Server

Name of Server: _____

☐ Other Please Specify

/s/Rick Dunbar

Signature of Attorney or Person Requesting Issuance

TAB NO. 4



Notice of Service of Process

KN4 / ALL
Transmittal Number: 30537312
Date Processed: 01/02/2025

Primary Contact: Sarah Starkey (SOP) only
National Indemnity Company
1314 Douglas St
Ste 1400
Omaha, NE 68102-1944

Electronic copy provided to: Luke Henkenius
Beck Lane
Angie Riviera
Sarah Starkey
Heather Koch
Mary Beth Hansen

Entity:	National Liability & Fire Insurance Company Entity ID Number 2297967
Entity Served:	National Liability & Fire Insurance Company
Title of Action:	B&S Wrecker Services, LLC vs. National Liability & Fire Insurance Company
Matter Name/ID:	B&S Wrecker Services, LLC vs. National Liability & Fire Insurance Company (16705468)
Document(s) Type:	Citation/Petition
Nature of Action:	Contract
Court/Agency:	Taylor County District Court, TX
Case/Reference No:	52074-A
Jurisdiction Served:	Texas
Date Served on CSC:	01/02/2025
Answer or Appearance Due:	10:00 am Monday next following the expiration of 20 days after service
Originally Served On:	CSC
How Served:	Certified Mail
Sender Information:	Frederick Dunbar 325-428-9450

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

THE STATE OF TEXAS
Case No. 52074-A

NOTICE TO DEFENDANT: "The citation shall include the following notice to the defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org."

TO: National Liability & Fire Insurance Company

Defendant, GREETINGS:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 42nd District Court of Taylor County, Texas, at the Courthouse of said County in Abilene, Texas.

Said Plaintiff's Petition was filed in said Court, by Frederick Dunbar, 7242 Buffalo Gap Rd Abilene TX 79606 on December 05, 2024 in this case, numbered 52074-A on the docket of said court, and styled,

B&S WRECKER SERVICES, LLC VS. NATIONAL LIABILITY & FIRE INSURANCE COMPANY

The nature of Plaintiff's demand is fully shown by a true and correct copy of the Plaintiff's Original Petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates hereof, and make due return as the law directs.

Issued and given under my hand and the seal of said Court at Abilene, Texas, on this the 5th day of December, 2024.

Attached Per Request of Attorney: Plaintiff's Original Petition

Clerk's Name and Address:
Tammy Robinson, District Clerk
Taylor County Courthouse
Suite 400
Abilene, Texas 79602

By: _____, Deputy
Monica Mendoza



RETURN OF SERVICE

52074-A 42nd District Court

B&S Wrecker Services, LLC vs. National Liability & Fire Insurance Company

Executed when copy is delivered:

This is a true copy of the original citation, was delivered to defendant _____, on the _____ day of _____, 20____.

_____, Officer

_____ County, Texas

By: _____, Deputy

ADDRESS FOR SERVICE:

National Liability & Fire Insurance Company

OFFICER'S RETURN

Came to hand on the _____ day of _____, 20____, at _____, o'clock _____m., and executed in _____ County, Texas by delivering to each of the within named defendants in person, a true copy of this Citation with the date of delivery endorsed thereon, together with the accompanying copy of the Plaintiff's Original Petition at the following times and places, to-wit:

Name	Date/Time	Place, Course and Distance from Courthouse
------	-----------	--

And not executed as to the defendant(s), _____

The diligence used in finding said defendant(s) being:

and the cause or failure to execute this process is:

and the information received as to the whereabouts of said defendant(s) being:

FEES:

Serving Petition and Copy \$ _____

Total \$ _____

_____, Officer
_____ County, Texas

By: _____, Deputy

Affiant

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The signature is not required to be verified. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return must either be verified or be signed under penalty of perjury and contain the following statement:

"My name is _____, my date of birth is _____, and my address is _____.

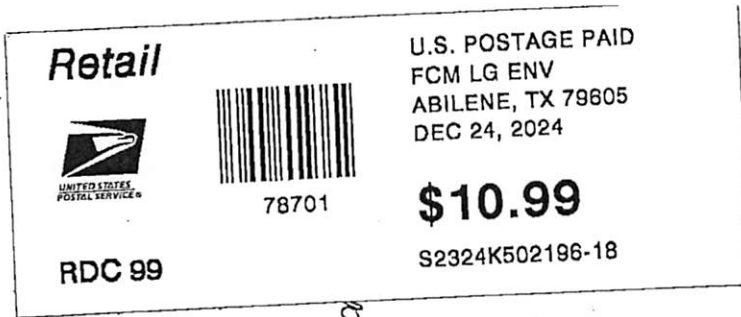
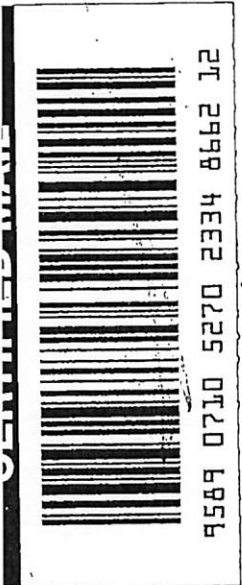
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in _____ County, State of _____, on the _____ day of _____.

Declarant/Authorized Process Server

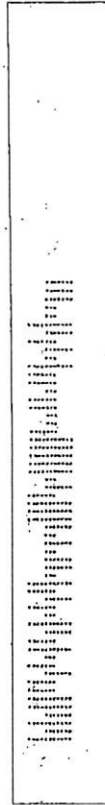
(Id # & expiration of certification)

810 S. 3rd
Abilene, TX 79602



Corporation Service Company
d/b/a CSC - Lawyers Incorporation Service Company
211 E. 7th St. Ste 620
Austin, TX 78701-3218

RETURN RECEIPT
REQUESTED



TAB NO. 5

THE STATE OF TEXAS
Case No. 52074-A

NOTICE TO DEFENDANT: "The citation shall include the following notice to the defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org."

TO: National Liability & Fire Insurance Company

Defendant, GREETINGS:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 42nd District Court of Taylor County, Texas, at the Courthouse of said County in Abilene, Texas.

Said Plaintiff's Petition was filed in said Court, by Frederick Dunbar, 7242 Buffalo Gap Rd Abilene TX 79606 on December 05, 2024 in this case, numbered **52074-A** on the docket of said court, and styled,

B&S WRECKER SERVICES, LLC VS. NATIONAL LIABILITY & FIRE INSURANCE COMPANY


The nature of Plaintiff's demand is fully shown by a true and correct copy of the Plaintiff's Original Petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates hereof, and make due return as the law directs.

Issued and given under my hand and the seal of said Court at Abilene, Texas, on this the 5th day of December, 2024.

Attached Per Request of Attorney: Plaintiff's Original Petition

Clerk's Name and Address:
Tammy Robinson, District Clerk
Taylor County Courthouse
Suite 400
Abilene, Texas 79602

By:  Deputy
Monica Mendoza



RETURN OF SERVICE

52074-A 42nd District Court

B&S Wrecker Services, LLC vs. National Liability & Fire Insurance Company

Executed when copy is delivered:

This is a true copy of the original citation, was delivered to defendant _____, on the _____ day of _____, 20____.

_____, Officer

_____, County, Texas

By: _____, Deputy

ADDRESS FOR SERVICE:**National Liability & Fire Insurance Company****OFFICER'S RETURN**

Came to hand on the _____ day of _____, 20____, at _____, o'clock _____m., and executed in _____ County, Texas by delivering to each of the within named defendants in person, a true copy of this Citation with the date of delivery endorsed thereon, together with the accompanying copy of the Plaintiff's Original Petition at the following times and places, to-wit:

Name	Date/Time	Place, Course and Distance from Courthouse
_____	_____	_____

And not executed as to the defendant(s), _____

The diligence used in finding said defendant(s) being:

_____ and the cause or failure to execute this process is:

_____ and the information received as to the whereabouts of said defendant(s) being:

FEES:

Serving Petition and Copy \$ _____

Total \$ _____

_____, Officer
_____, County, Texas

By: _____, Deputy

Affiant**COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.**

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The signature is not required to be verified. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return must either be verified or be signed under penalty of perjury and contain the following statement:

"My name is _____, my date of birth is _____, and my address is _____."

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in _____ County, State of _____, on the _____ day of _____.

Declarant/Authorized Process Server_____
(Id # & expiration of certification)

TAB NO. 6



ELLIOTT T. COOPER

214-712-9552
Elliott.Cooper@cooperscully.com

January 14, 2025

VIA EFILE:

Taylor County District Clerk's Office
300 Oak Street
Abilene, TX 79602

Re: Cause No. 52074-A; *B&S Wrecker Services, LLC, Plaintiff v. National Liability & Fire Insurance Company, Defendant*; In the 42nd Judicial District Court, Taylor County, Texas.
Our File No. 2852-30060

RECORDS REQUEST

Dear Clerk:

Please allow this correspondence as my request for a copy of the Docket, and filings regarding the above-referenced cause. Payment of the fee for the copy is made electronically with this filing.

Please return the copies to: elliott.cooper@cooperscully.com.

Thank you for your assistance in this matter.

Regards,

A handwritten signature in black ink, appearing to read "Elliott T. Cooper".

Elliott T. Cooper

ETC/gc

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Gina Cox on behalf of Elliott Cooper

Bar No. 24069534

gina.cox@cooperscully.com

Envelope ID: 96221257

Filing Code Description: Request

Filing Description: Letter to court requesting documents.

Status as of 1/14/2025 4:57 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Frederick Dunbar	24025336	Rickdunbar2013@gmail.com	1/14/2025 4:51:46 PM	SENT
R. BrentCooper		brent.cooper@cooperscully.com	1/14/2025 4:51:46 PM	SENT
Elliott Cooper		elliott.cooper@cooperscully.com	1/14/2025 4:51:46 PM	SENT
Gina Cox		gina.cox@cooperscully.com	1/14/2025 4:51:46 PM	SENT

TAB NO. 7

CAUSE NO. 52074-A

B&S WRECKER SERVICES, LLC,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
V.	§	42ND JUDICIAL DISTRICT
	§	
NATIONAL LIABILITY & FIRE	§	
INSURANCE COMPANY,	§	
	§	
Defendant.	§	TAYLOR COUNTY, TEXAS

**DEFENDANT NATIONAL LIABILITY & FIRE INSURANCE COMPANY'S
ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, NATIONAL LIABILITY & FIRE INSURANCE COMPANY, Defendant in the above-entitled and numbered cause, and file this their Original Answer to Plaintiff's Original Petition, and for such would respectfully show the Court as follows:

I.**GENERAL DENIAL**

Defendant National Liability & Fire Insurance Company, generally denies each and every allegation, both singular and plural, averred in Plaintiff's Original Petition and every amendment or supplement thereto, and demand strict proof thereof by a preponderance of evidence pursuant to Rule 92 of the Texas Rules of Civil Procedure.

II.**AFFIRMATIVE DEFENSES****A. Defendant Complied With All Conditions Precedent**

Defendant National Liability & Fire Insurance Company affirmatively states that it satisfied all contractual obligations to Plaintiff and has properly complied with the policy terms,

conditions, duties, and limitations of coverage. National Liability & Fire Insurance Company specifically denies that it breached any terms or conditions of the subject policy with Plaintiff.

B. Failure of Policy Conditions Precedent

Plaintiff failed to comply with all conditions precedent to coverage under the subject policy pursuant to which the insurance claim made the basis of this action has been presented. Plaintiff failed to present and prove a covered claim under the National Liability & Fire Insurance Company policy and has failed to segregate covered from non-covered damages.

C. Policy Terms Preclude or Limit Coverage

The incident alleged by Plaintiff is either not covered by the applicable terms of the National Liability & Fire Insurance Company policy or is otherwise excluded from coverage. Specifically, the following terms apply to preclude coverage:

SECTION II – LIABILITY COVERAGE

B. Exclusions

This insurance does not apply to any of the following:

6. Care, Custody Or Control

“Property damage” to or “covered pollution cost or expense” involving property owned or transported by the “insured” or in the “insured’s” care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

SECTION III – PHYSICAL DAMAGE COVERAGE

A. Coverage

1. We will pay for "loss" to a covered "auto" or its equipment under:

a. Comprehensive Coverage

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

c. Collision Coverage

Caused by:

- (1) The covered "auto's" collision with another object; or

(2) The covered "auto's" overturn.

B. Exclusions

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

3. We will not pay for "loss" due and confined to:

a. Wear and tear, freezing, mechanical or electrical breakdown.

SECTION IV – BUSINESS AUTO CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

B. General Conditions

2. Concealment, Misrepresentation Or Fraud

This coverage form is void in any case of fraud by you at any time as it relates to this coverage form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This coverage form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this coverage form.

SECTION V – DEFINITIONS

J. "Loss" means direct and accidental loss or damage

The Policy's physical damage only applies to "direct and accidental loss or damage."

The Policy's physical damage coverage does not apply to damages confined to wear and tear or mechanical breakdown, the policy does not provide coverage. The Policy does not apply if material facts of the claim were concealed or misrepresented by Plaintiff. The Liability coverage of the policy does not apply as the 2014 Dodge at issue is owned by the Plaintiff.

National Liability & Fire Insurance Company reserves the right to amend and assert any rights available under the policy. Nothing in this answer is intended to constitute a waiver of any policy term or condition.

D. Lack of Coverage Precludes Extra-Contractual Liability

The existence of coverage for the underlying insurance claim is mandatory to establish the basis of Plaintiff's claims for common-law "bad faith" and violations of the Texas Unfair Claim Settlement Practices Act¹. Because Plaintiff's allegations are generally based upon National Liability & Fire Insurance Company's alleged failure to pay policy benefits, the absence of coverage for Plaintiff's underlying insurance claim precludes Plaintiff's extra-contractual claims against National Liability & Fire Insurance Company arising out of those allegations.

E. Bona Fide Controversy/Reasonable Basis

As to all of Plaintiff's extra-contractual claims alleging violations of the Texas Insurance Code, and any other extra-contractual claims, National Liability & Fire Insurance Company would show that a *bona fide* controversy existed and continues to exist concerning Plaintiff's entitlement to insurance benefits, such as to preclude extra-contractual liability, including, but not limited to, the preclusion of damages provided for in TEX. INS. CODE § 541.152.

F. Damage Limitation

Plaintiff's damages, if any, are limited by the amount set forth in the policy limitations provisions of the applicable insurance policy.

G. Credit/Offset

In the event Plaintiff prevails on all or part of its claims against National Liability & Fire Insurance Company, National Liability & Fire Insurance Company is entitled to a credit for all amount already paid by any party or entity to Plaintiff for the damages that are the subject of this suit. National Liability & Fire Insurance Company is entitled to a credit or offset for all policy

¹ TEX. INS. CODE Chapter 541

benefits paid to Plaintiff for the claims under the National Liability & Fire Insurance Company policy.

H. Due Process

To the extent Plaintiff prays for punitive damages, National Liability & Fire Insurance Company invokes its rights under the due process clause of the Fifth Amendment of the United States Constitution as applied to the states through the Fourteenth Amendment of the United States Constitution. National Liability & Fire Insurance Company affirmatively pleads that Plaintiff's pleading of punitive and/or exemplary damages violates the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

I. Punitive Damages Limitation.

With respect to Plaintiff's claim for damages, any award of punitive damages must be limited to the greater of: (1) two times the amount of economic damages plus an amount equal to any non-economic damages found by the jury, not to exceed \$750,000; or (2) two times the amount of economic damages plus \$200,000, pursuant to the statutory mandates of TEX. CIV. PRAC. & REM. CODE §§ 41.002-41.009, as well as all other statutory damage caps provided by law.

J. Failure to Mitigate/Contribution

Plaintiff is barred from recovering any damages from National Liability & Fire Insurance Company, in whole or in part, due to Plaintiff's failure to mitigate the alleged damages and contribution to the alleged damages.

K. Reservation of Rights

National Liability & Fire Insurance Company reserves the right to amend and/or supplement its answer to assert additional coverage defenses.

WHEREFORE, PREMISES CONSIDERED, Defendant National Liability & Fire Insurance Company prays that upon final hearing hereon, Plaintiff takes nothing, and that this Defendant be discharged hence without day, to recover all costs expended on its behalf, and for such other and further relief, both general and special, both at law and in equity, to which Defendant National Liability & Fire Insurance Company may show itself justly entitled.

Respectfully submitted,

COOPER & SCULLY, P.C.

By: /s/ R. Brent Cooper

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**ATTORNEYS FOR DEFENDANT
NATIONAL LIABILITY & FIRE
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was forwarded to all counsel of record herein via E-File/E-Serve, on this the 24th day of January, 2025.

/s/ R. Brent Cooper

R. BRENT COOPER

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Gina Cox on behalf of Richard Cooper

Bar No. 4783250

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Envelope ID: 96567578

Filing Code Description: Answer/Response

Filing Description: Defendant National Liability & Fire Insurance

Company's Original Answer to Plaintiff's Original Petition

Status as of 1/24/2025 1:11 PM CST

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